IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

Bail Appl..No. 4161 of 2007()

CRIME NO. 223/07 OF KARUNAGAPPALLY POLICE STATION
CRMP.1930/2007 of D.C. & SESSIONS COURT,KOLLAM

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PETITIONER/2ND ACCUSED

SANDEEP, S/O RAMAKRISHNAN,
PADA NORTH, KARUNAGAPPALLY.

BY ADV. SRI.P.S.BIJU

RESPONDENTS:

STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.
(CRIME NO.223 OF 2007 OF KARUNAGAPPALLY POLICE STATION)

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4161 of 2007

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Dated this the 10th day of July, 2007

O R D E R

Application for anticipatory bail. Petitioner is the second accused in a crime registered, inter alia, under Sections 332 and 307 r/w. 149 I.P.C. The crux of the allegations is that there was an unpleasant incident between an A.S.I. of Police on duty in a temple festival and some members of the public. The petitioner was also allegedly involved in the said incident. There is no serious, specific and contumacious overt act alleged against the petitioner, though his name figures in the F.I.R. as one of a group of miscreants. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Even accepting the allegations in the F.I.S. as gospel truth, all that turns out is that the petitioner had pushed the A.S.I.. The petitioner is not shown to be guilty of any other specific overt act. In as much as the police is the alleged victim, unnecessary allegations have been raised under Section 307

I.P.C. It is submitted that the inclusion of the offence under Section 307 I.P.C . is with the transparent intention of vexing and harassing the petitioner and to ensure that he is denied bail for as long a period as possible. Inclusion of offence under Section 307 I.P.C. reveals want of bonafides on the part of the police. The petitioner apprehends physical harm if he appears before or is arrested by the police. In these circumstances he prays that anticipatory bail may be granted in his favour.

3. The learned Prosecutor opposes the application. He submits that though there is no specific or serious overt act alleged against the petitioner, the allegation is that he shared the common object of the unlawful assembly and one member of the assembly attacked the A.S.I. with a stone. The learned Prosecutor submits that this is not a fit case where the equitable discretion under Section 438 Cr.P.C. can or ought to be invoked. The petitioner may be directed to surrender before the Magistrate or the Investigating Officer and seek regular bail in the ordinary course, submits the Prosecutor.

4. Having considered all the relevant inputs, I am satisfied that directions under Section 438 Cr.P.C. can be issued in favour of the petitioner. In coming to this conclusion I take particular note of the

submission of the learned counsel for the petitioner that the allegation under Section 307 I.P.C. has unjustifiably been raised against the petitioner. I further take note of the justified apprehension of the petitioner that physical harm might result to the petitioner if he were arrested by the police. Taking all the relevant circumstances into account, I am satisfied that directions under Section 438 Cr.P.C. limited by time can be issued in favour of the petitioner.

5. In the result:

(1) This application is allowed in part.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 17.7.2007 at 11 a.m. He may give prior notice (even before his surrender) to the Prosecutor in charge of the case and apply for regular bail. The learned Magistrate shall hear the Prosecutor and the petitioner and pass appropriate orders on that application for regular bail on the date of surrender itself. I make it clear that while considering the application for regular bail, the learned Magistrate shall not take into account the allegation raised under Section 307 I.P.C. He shall consider the bail application as if such an allegation is not raised at all.

(b) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 17.7.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(c) If the petitioner were arrested prior to his surrender on 17.7.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 17.7.2007.

(R. BASANT)
Judge

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